

REMARKS

Applicants wish to thank Examiner Gilbert for the courtesies extended to applicants' representatives during the in-person interview on September 17, 2008, during which time the Examiner and applicants' representatives discussed the features of the claims in light of the outstanding Office action and the applied references. Applicants have amended independent claims 8, 14, 46, and 67 in the manner discussed with the Examiner. Accordingly, applicants respectfully request withdrawal of the rejections and submit that all claims are in condition for allowance.

Claims 8-15, 17-18, 38-39, 41-49, 51-53, 55-58, 67, and 71-75 are pending, with claims 8, 14, 46, 51, 53, 67, and 71 being independent. Claims 42-43, 51, and 53 have been withdrawn by the Examiner. Claims 8, 14, 46, and 67 have been amended, claims 40, 50, 54, 62-66, and 68-70 have been canceled herein, without prejudice, and new claims 71-75 have been added. No new matter is presented by the amendments or the new claims. Applicants respectfully submit that all pending claims are in condition for allowance for at least the following reasons.

Claim Rejections Under 35 U.S.C. § 112

Claims 40, 46, 50, 62, 64, and 68-70 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Without conceding the propriety of the Examiner's rejections, applicants have canceled claims 40, 50, 62, 64, and 68-70 herein, without prejudice, and therefore this rejection is rendered moot with respect to these claims. Claim 46 has been amended to more particularly recite the subject matter thereby also rendering the rejection moot. For at least these reasons, Applicants respectfully request favorable reconsideration and withdrawal of the rejections under 35 U.S.C. § 112.

Claim Rejections Under 35 U.S.C. 103

The Examiner has rejected claims 8-13, 41, 44-45, and 67 as obvious over U.S. Patent No. 6,370,420 to Kraft ("Kraft"). Claims 8 and 67 are independent.

Independent claims 8 and 67, as amended, recite an introducer configured to introduce fluid into a spine of a patient, the introducer comprising a movable element disposed within the introducer, the movable element including a pressure transducer secured with respect to the movable element such that the pressure transducer is in direct contact with fluid in the introducer. As discussed with the Examiner during the interview, Kraft fails to disclose or suggest the introducer as claimed. Accordingly, claims 8 and 67 are allowable over Kraft, as are claims 9-13, 41, and 44-45, which depend from claim 8.

The Examiner has rejected claims 14-15, 17-18, and 55-58 as obvious over U.S. Patent No. 6,945,954 to Hochman et al. ("Hochman"). Claim 14 is independent.

Independent claim 14, as amended, recites an operator configured to actuate the introducer, the operator including code to introduce the fluid into the spine at a flow rate that is not controlled by feedback based on a pressure of the fluid within an intervertebral disc. As discussed with the Examiner during the interview, Hochman fails to disclose or suggest the operator as claimed. Accordingly, claim 14 is allowable over Hochman, as are dependent claims 15, 17-18, and 55-58.

The Examiner has rejected claim 38, which depends from claim 8, as being obvious over Kraft in view of U.S. Patent No. 6,258,042 to Factor et al. ("Factor"). Factor does not overcome the deficiencies in Kraft discussed above with respect to claim 8, and for at least these reasons, claim 38 is patentable over Kraft in view of Factor.

The Examiner has rejected claims 38-40, 46-50, 52-54, 62-66, and 68 as being obvious over Kraft in view of U.S. Patent No. 5,692,500 to Gaston-Johansson ("Gaston-Johansson").¹ Gaston-Johansson does not overcome the deficiencies in Kraft discussed above, and therefore, for at least these reasons, pending claims 38-40, 46-49, and 52-53 are patentable over Kraft in view of Gaston-Johansson.

¹ Claims 50, 54, 62-66 and 68 have been canceled herein, without prejudice, thereby rendering this rejection moot as to these claims.

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The Examiner has rejected claims 38-40, 46-50, 52-54, 62-66, and 68-70 as being obvious over Kraft in view of U.S. Patent No. 6,856,315 to Eberlein ("Eberlein").² Eberlein likewise does not overcome the deficiencies in Kraft discussed above, and therefore, for at least these reasons, pending claims 38-40, 46-49, and 52-53 are patentable over Kraft in view of Eberlein.

Applicants do not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, applicants may not have addressed all characterizations of the art and reserve the right to do so in further prosecution of this or a subsequent application. The absence of an explicit response by applicants to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that applicants' comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. Applicants submit that all of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

No fees are believed due in connection with the filing of this Reply. Nevertheless, the Office is authorized to apply any charges or credits due in connection with the filing of this Reply or otherwise to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 09/23/08



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² Claims 50, 54, 62-66, and 68-70 have been canceled herein, without prejudice, thereby rendering this rejection moot as to these claims.